

FWS, DOI, and NOAA, Commerce

§ 403.03

403.08 List of States to which management has been transferred.

AUTHORITY: 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

SOURCE: 48 FR 22456, May 18, 1983, unless otherwise noted.

§ 403.01 Purpose and scope of regulations.

The regulations contained in this part implement section 109 of the Act which, upon a finding by the Secretary of compliance with certain requirements, provides for the transfer of marine mammal management authority to the states.

(a) The regulations of this part apply the procedures for the transfer of marine mammal management authority to a state, the form and minimum requirements of a state application for the transfer of management authority, the relationship between Federal and state wildlife agencies both prior and subsequent to the transfer of management authority, and the revocation and return of management authority to the Federal Government.

(b) Nothing in this part shall prevent:

(1) The taking of a marine mammal by or on behalf of a Federal, state or local government official, in accordance with §18.22 or §216.22 of this Title and section 109(h) of the Act, or (2) the adoption or enforcement of any state law or regulation relating to any marine mammal taken before December 21, 1972.

(c) The information collection requirements contained in §§ 403.03, 403.06, and 403.07 of this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

§ 403.02 Definitions.

The following definitions apply to this part:

(a) The term *species* includes any population stock.

(b) *Optimum Sustainable Population* or *OSP* means a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is

the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

(c) *State management program* means existing and proposed state statutes, regulations, policies and other authorities which form the framework for the conservation of a species of marine mammals.

(d) *State regulation* means the whole or part of a state agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a state agency and which is duly promulgated in accordance with established procedure.

(e) The *Act* means the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. 1361 *et seq.*, as amended by Pub. L. 97-58.

(f) The *Secretary* means the Secretary of the Interior or the Secretary of Commerce, depending on the species involved. Under section 3(11) of the Act, the Secretary of Commerce has jurisdiction over members of the order Cetacea and members, other than walrus, of the order Pinnipedia; the Secretary of the Interior has jurisdiction over all other mammals. These secretarial authorities have been delegated to the National Marine Fisheries Service and the Fish and Wildlife Service, respectively.

(g) The *Service* or *Services* means the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as appropriate depending on the species involved. Any determination or finding required by this part to be made by the "Service" must be made by the Director of the FWS or by the Assistant Administrator of the NMFS, or their delegates, as appropriate.

§ 403.03 Review and approval of State request for management authority.

(a) Any state may request the transfer of management authority for a species of marine mammals by submitting a written request to the Director of the Fish and Wildlife Service ("Director") for species of marine mammals under